

LOBSITZ v. UNITED STATES.

(Circuit Court, S. D. New York. May 22, 1896.)

CUSTOMS DUTIES—CLASSIFICATION—CAMEL'S HAIR NOILS.

Camel's hair noils, being the short hair of the camel, obtained by combing, were dutiable as noils, under paragraph 388 of the act of October 1, 1890, and not as camel's hair of the second class, under paragraphs 377 and 384, or as waste, under paragraph 472.

This was an appeal by S. Lobsitz from a decision of the board of appraisers as to the classification for duty of certain merchandise imported by him.

Stephen G. Clarke, for importer.
Henry C. Platt, Asst. U. S. Atty.

TOWNSEND, District Judge. The articles in question are camel's hair noils. They were classified for duty under paragraph 388 of the act of 1890, which is as follows:

"388. On noils, shoddy, top waste, slubbing waste, roving waste, yarn waste, garnetted waste and all other wastes composed wholly or in part of wool, the duty shall be thirty cents per pound."

The importer protested, claiming that they are dutiable as camel's hair of the second class, under paragraphs 377 and 384 of said act, or as waste, under paragraph 472. The latter claim was not pressed on the argument. It is clear that the article in question is not waste. *Standard Varnish Works v. U. S.*, 8 C. C. A. 178, 59 Fed. 456; *Patton v. U. S.*, 16 Sup. Ct. 89. The single question in the case is whether the concluding clause of paragraph 388, "composed of wool," refers to these noils. It appears from paragraph 375 that Schedule K treats generally of wools, hair of the camel, etc. It is further relevant as bearing upon this question that the provisions for noils and for articles made from camel's hair both appear for the first time in this tariff act. A "noil" means the short hair of the camel or sheep, obtained by combing. In the latter the short fibers are the inferior product; in the former, the short hairs are the superior product. In view of the decision of the supreme court in *Robertson v. Salomon*, 144 U. S. 603, 12 Sup. Ct. 752, as interpreted by the circuit court of appeals in *Lowenthal v. U. S.*, 18 C. C. A. 299, 71 Fed. 692, it is doubtful whether the qualifying clause would in any case relate back to the word "noils." In this case, however, as camel's hair noils are not a waste, and as congress has carefully enumerated various kinds of woolen waste, and has limited the qualifying phrase, "composed of wool," to other wastes only, it would seem that it did not intend to include camel's hair noils therein. The designation under paragraph 388 of "noils," or the short hair of the camel produced by combing, is more specific than the general designation of camel's hair. If, as is contended by counsel for the importer, congress only intended to include in said paragraph such noils as are in fact waste, and therefore only noils from the wool of the

sheep, yet the precise language used does not permit of this construction. The word "noils" includes noils of camel's hair. Such noils are not waste. Therefore the language, "all other wastes," does not cover camel's hair. The decision of the board of general appraisers is affirmed.

LONG et al. v. POPE MANUF'G CO.¹

(Circuit Court of Appeals, First Circuit. July 14, 1896.)

No. 172.

1. PATENTS—INTERPRETATION OF CLAIMS—FUNCTIONS NOT MENTIONED.

The fact that the inventor claims only certain functions for his invention will not prevent him from reaping the advantage of any other function within the claims as properly construed, available without a modification of the machine which involves the use of further inventive faculty, whether known to him and omitted from the specifications without fraud, or not known to him.

2. SAME—ENUMERATED FUNCTIONS.

But so much of the mere form given in the specification, drawings, and claim as is necessary to the accomplishment of all the functions expressly enumerated is essential, and must be retained. A function afterwards discovered cannot be used to broaden the claim, and is available only when the patent, construed in the light of the circumstances existing when it was applied for, is broad enough to cover it.

3. SAME.

It would establish a dangerous precedent to give to a mere paper patent, which has lain dormant for years, a breadth not contemplated on its face, by reason of some new function discovered long after its issue, and after that function had been availed of in practice by others.

4. SAME—ROAD VEHICLES.

The Long patent, No. 281,091, for an improved steering head for road vehicles, construed, and held not infringed. 70 Fed. 855, affirmed.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a suit in equity by George A. Long and others against the Pope Manufacturing Company for alleged infringement of letters patent No. 281,091, issued July 10, 1883, to George A. Long, for an improved steering head for road vehicles. The circuit court held that there was no infringement, and dismissed the bill. 70 Fed. 855. The complainants appeal.

Jas. E. Maynadier, for appellants.

Wm. A. Redding and Edmund Wetmore, for appellee.

Before COLT and PUTNAM, Circuit Judges, and NELSON, District Judge.

PUTNAM, Circuit Judge. This patent was taken out in 1882, and, so far as it comes in issue here, it has not been put into prac-

¹ Rehearing denied August 17, 1896.